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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,682	11/09/2001	Michel Schmidt	11954-1920	9711
7590	06/09/2004		EXAMINER	
George M. Thomas THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P. Suite 1500 100 Galleria Parkway, N.W. Atlanta, GA 30339-5948			PARSLEY, DAVID J	
		ART UNIT	PAPER NUMBER	
		3643		
DATE MAILED: 06/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/044,682	SCHMIDT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David J Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 March 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 and 10-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 10,11 and 21-23 is/are allowed.
- 6) Claim(s) 1,5,6,12-20 and 24 is/are rejected.
- 7) Claim(s) 2-4 and 7-8 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 November 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 3-11-04 and this action is final.

### ***Claim Objections***

2. Claim 10 is objected to because of the following informalities: on line 18 "the" before "shaft" should be - -a- -. Appropriate correction is required.

Claim 12 is objected to because of the following informalities: "wheels" in line 6 should be - -wheel- -. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-6, 12-13 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,709,448 to McGuire et al.

Referring to claims 1, 12 and 24, McGuire et al. discloses an apparatus for transferring poultry carcasses suspended from shackles from a first overhead conveyor to a second overhead conveyor comprising, a transfer wheel – at 20, having a perimeter rotatable about a vertical axis – proximate 25, for positioning between the first and second conveyors – at A,B or C,D, the transfer wheel being provided with carcass holders – at 60,64, at the perimeter of the transfer wheel that are movable with the transfer wheel and revolve about the vertical axis of the transfer wheel – see for example figure 3, each carcass holder having a central shaft – proximate 61, about which it rotates, the carcass holders being rotatable with respect to the transfer wheel – see for example figures 6-8, and holder orientation means – see figures 5-8 or at A and C as seen in figure 3, operatively associated with the transfer wheel configured for rotating the carcass holders with respect to the transfer wheel and for equalizing the rotational orientation of the carcass holders from receipt of the carcasses on the transfer wheel to the discharge of the carcasses from the transfer wheel, the initial rotational orientation and the final orientation of the carcasses being identical relative to the first overhead conveyor and the second overhead conveyor – see for example figures 1 and 3-4 at A,B or C,D.

Referring to claims 5 and 13, McGuire et al. discloses the orientation means – at A and C, is adapted for rotating the holders – at 60,64, 1:1 with respect to the rotation of the transfer wheel from receipt to discharge of the carcasses from the transfer wheel – at 20 – see for example figures 1-8.

Referring to claim 6, McGuire et al. discloses the orientation means comprises a first orientation means – at 62, for orienting a first of the holders – at 63, and second orientation

means – at 61, for orienting others of the holders – at 64, the second orientation means are operated by the first orientation means – see for example figures 1-8.

Claims 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,514,033 to Berry.

Referring to claim 14, Berry discloses a holder – at 19, 19', for suspended transport of poultry, comprising a shackle for suspending a poultry carcass by its legs, the shackle provided with two substantially parallel accommodation spaces – proximate 24-27 and/or 24'-27', for the legs of the poultry, the accommodation spaces each forming a continuous open ended slit in a horizontal direction, the distance between the accommodation spaces at their one end being different for the distance at their other end, with the legs of the carcass inserted into one end of the accommodation spaces – see for example figures 5-7. The limitations of the carcass suspended by its legs from the holder and carried by the holder to another location and the legs removed from the other end of the accommodation spaces constitutes method limitations in an apparatus claim and therefore since they add no further structure to the apparatus are not being considered, see *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959).

Referring to claim 15, Berry discloses inclined turned end members being arranged on either side of one end of the accommodation spaces to prevent unintentional backwards movement of the legs – see for example figure 6.

Referring to claim 16, Berry discloses the distance between the accommodation spaces being larger at one end than at the other end, and inclined turned end members being arranged on either side of one of the accommodation spaces to prevent unintentional backwards movement of the legs – see for example figures 5-6.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGuire et al. as applied to claims 1 and 12 above, and further in view of EP Patent No. 1038443 to Meyn.

Referring to claims 17-20, McGuire et al. does not disclose the holders being provided with accommodation spaces for the legs of the carcasses, the accommodation spaces each forming an open ended horizontal slit, and the distance between the accommodation spaces of the holders at their one end of the holders being different from the distance therebetween at their other end of the holders. Meyn '443 does disclose accommodation spaces at – 3-5 for the legs of the carcass, the accommodation spaces forming a continuous horizontal slit – see for example figures 1-2, and the distance between the accommodation spaces at their one end being different from the distance therebetween at their other end – see for example figures 1-2 where the distance between the inner portions – 8 of the slit differ from the distance between the outer portions – at 6. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McGuire et al. and add the holder of Meyn '443, so as to allow for less impedance to the movement of the carcass inside the holder.

*Allowable Subject Matter*

5. Claims 10-11 and 21-23 are allowed.

Claims 2-4 and 7-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

6. Applicant's arguments with respect to claims 1-8, 12-13, 17-20 and 24 have been considered but are moot in view of the new ground(s) of rejection.

Regarding claims 14-16, applicant argues that the Berry reference US 5514033 does not disclose continuous open-ended slits, however this limitation has been deleted from claim 14 as per the latest amendment dated 3-11-04 and therefore is no longer pending.

*Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3643

DP  
David Parsley  
Patent Examiner  
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*Peter M. Poon*  
**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**  
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5/11/07